

JAMES A. FORT

IBLA 80-680

Decided December 15, 1980

Appeal from decision of the Arizona State Office, Bureau of Land Management, rejecting Indian allotment application A-13351 (MCK).

Affirmed.

1. Indian Allotments on Public Domain: Lands Subject To --
Withdrawals and Reservations: Generally

Lands withdrawn for reclamation purposes are not available for disposition under the public land laws, including the Indian Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), and an application thereunder for land so withdrawn is properly rejected.

APPEARANCES: James A. Fort, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The Arizona State Office of the Bureau of Land Management (BLM) issued a decision dated May 5, 1980, which stated in pertinent part:

The subject lands are included in a withdrawal for reclamation purposes effected by Secretarial Order of July 30, 1931. Department of Interior regulations (43 CFR 2091.1) provide, in applicable part, that applications ". . . must be rejected and cannot be held pending possible future availability of the land or interests in land, when approval of the application is prevented by withdrawal or reservation of lands . . ."

Appellant argues, in effect, that allotment rights to the applied for lands should accrue to him by virtue of his possession of a certificate of eligibility from the Bureau of Indian Affairs. See 43 CFR 2531.1(b). He also asserts that 43 CFR 2530.0-3(a) mandates the granting of Indian allotments "where any Indian entitled to allotment under

existing laws shall make settlement (the interpretation here would be settlement or claim) upon any surveyed or unsurveyed lands of the United States not otherwise appropriated."

On February 12, 1980, James A. Fort (hereinafter appellant) had filed an Indian allotment application pursuant to section 4 of the General Allotment Act (Act) of February 8, 1887, as amended, 25 U.S.C. §§ 334, 336 (1976). The land described in this application is the S 1/2 sec. 12, T. 1 N., R. 7 E., Gila and Salt River meridian, Arizona, except the area included in Recreation and Public Purposes Lease A-7310. Appellant proposes to use the lands in issue for the growing of roses.

On July 30, 1931, the lands sought by appellant were, by Secretarial order, withdrawn from public entry, under the first form of reclamation withdrawal, as provided in section 3, Act of June 17, 1902, as amended, 43 U.S.C. § 416 (1976).

[1] The decision dated May 5, 1980, rejected appellant's application in part on the ground that a Secretarial order of July 30, 1931, had withdrawn from settlement those lands sought by him. The land is still affected in the withdrawal. Lands withdrawn for construction and maintenance of irrigation works (commonly known as first form reclamation withdrawals, Instructions, 33 L.D. 607 (1905) have always been held closed to entry while so withdrawn. 43 CFR 2322.1-1; Dallas C. Qualman, 36 IBLA 119 (1978); Lewis M. Eslick, 24 IBLA 237 (1976); Richard E. Crill, 18 IBLA 428 (1975). Settlement upon a tract of land withdrawn from entry is a trespass and provides no basis for any claim to the land. Donald E. Miller, 2 IBLA 309 (1971). In the case at bar, no showing of settlement has been made. Although the decision of rejection also adverted to other grounds, the withdrawal issue is dispositive of this case and we need not address the other issues.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

